

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 214 / 2020 (S.B.)

Dr. Prakash Shrichand Khatwani,
Occupation- Service,
701, Ruby-D Building, Yogidham,
CHS, Kalyan (West)-421301
District- Thane.

Applicant

Versus

Secretary, ESIS Health Services,
Government of Maharashtra, Mumbai
Gokuldas Tejpal (GT) Hospital,
Campus Building, 10th Floor,
Lokmanya Tilak Marg,
Mumbai- 400 001.

Respondent

Dr. Prakash Shrichand Khatwani, applicant in person.

Shri A.M.Ghogre, the ld. P.O. for the respondents.

Coram :- Hon'ble Shri Justice M.G.Giratkar, Vice Chairman.

Dated :- 11/11/2022.

JUDGMENT

Heard Dr. Prakash Shrichand Khatwani, applicant in person and Shri A.M.Ghogre, ld. P.O. for the Respondents.

2. Applicant has filed the present O.A. with a prayer to direct the respondents to pay him salary for the period 23.06.2017 to 01.02.2021, because he was not allowed to join duty and was forced to return home. The case of the applicant in short is below:-

The applicant is a regular M.P.S.C. selected officer working in E.S.I.S., Health Services, Government of Maharashtra since 15.01.1998. The applicant was transferred from Mumbai to Nagpur on 23.06.2009. The applicant requested to consider to transfer back to Mumbai or suburbs as per representation dated 14.07.2009. The applicant also sent reminder on 20.12.2010. The applicant sent email to hospital on 27.11.2015 to grant leave because his mother's condition was critical. The applicant sent registered A/D letter on 28.01.2016 and requested to extend his leave and consider his transfer back to Mumbai. The applicant sent reminder to above application on 21.12.2016. The applicant took medical certificate dated 20.06.2017 and want to join the duty on 23.06.2017 at Nagpur but they refused to allow him to join duty.

3. The applicant sent again request letter for joining at duty by registered post on 12.07.2017. The applicant received letter from the hospital authorities on 12.10.2017 that his request for joining duty has been forwarded to Government and till they receive reply from Government, he should not waste their time by doing frequent correspondence. Since there was no response from the Government for more than one month, the applicant submitted application to M.L.A. who was State Medical Education Minister. He forwarded the same to Health Minister dated 17.11.2017. The applicant personally met Health Minister and handed over the application which was duly stamped and endorsed by his Personal Assistant. The applicant awaited for Health Minister's response for nine months then submitted fresh application to Government Health Department on 02.08.2018 that if they are not allowing him for joining duty consider his voluntary retirement (VRS) as he has completed 20 years of Government service. The applicant awaited for seven months then he submitted RTI application on 02.04.2019

seeking information regarding Government rules according to which he has not being allowed to join duty. As there was not satisfactory reply from the Government, applicant again submitted appeal on 10.05.2019. Again there was no satisfactory reply from the Government, applicant again submitted second R.T.I. appeal on 22.07.2019, said appeal is not decided till date. Therefore, applicant prayed for suitable directions to the respondents to pay him salary for the period from 23.06.2017 to 01.02.2021.

4. Respondents have specifically denied the contention of the applicant and in para nos. 6, 7, 8 & 12 specifically submitted that applicant was absent for a period of near about seven years therefore, the departmental inquiry was started against him. Hence, the applicant was not allowed to join his duty. Therefore, there is no substance in the original application and liable to be dismissed.

5. Heard Shri Dr. Khatwani, applicant in person. He has submitted that he was not allowed to join duty though he approached several time. He made several correspondences to the respondents but he was not allowed to join duty. Now, he is allowed to join duty on 01.02.2021.

6. Applicant in person further submitted that he is entitled for the salary for the period from 23.06.2017 to 01.02.2021 because he was not allowed to join duty in the said period. The applicant Dr. Khatwani has placed reliance on the Judgment of Hon'ble Supreme Court in the case of **Union of India Vs. K.V.Jankiraman** etc. delivered on 27.08.1991. He has pointed out material portion i.e. para no. 3 of the Judgment of the Hon'ble Apex Court and submitted that when he was willing to join the

duty then he is entitled for the salary for the period from 23.06.2017 to 01.02.2021.

7. Heard Shri Ghogre, he has pointed out the order passed by this Tribunal dated 13.07.2022. He has pointed out para no. 5 of the order. Ld. P.O. has submitted that as per the directions given by this Tribunal the detailed inquiry was made by the respondents. Today he has submitted the result of the inquiry, the copy of the letter/inquiry is marked 'X' for the purpose of identification.

8. There is no dispute that applicant was not on work from 23.06.2017 to 01.02.2021. Normal rule is that 'no work no pay'. The Hon'ble Supreme Court has also reiterated the same principle. In para no. 3, the Hon'ble Supreme Court has observed:-

"The normal rule of "no work no pay" is not applicable to cases where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him."

In the present matter the applicant was not on duty from 23.06.2017 to 01.02.2021. As per his submission, he wanted to join but he was not allowed. On 13.07.2022, this Tribunal has passed following order:-

"3. Now, situation is that after the M.A.T. order dated 04.10.2021; applicant has join duty on 01.02.2021 and he was paid salary accordingly. Respondents have also filed his pay-slip in this regard. Now, the grievance of the applicant is that the period between 23.06.2017 to 01.02.2021. Since as per his

contention he was forced not to join, so his salary should also be paid.

4. Respondents are directed to make an enquiry committee. A detailed enquiry should be done for the period of 23.06.2017 to 01.02.2021 regarding absence/ presence on duty of the applicant. According to the applicant he desire to join but he was prevented by respondent not to join duty. The enquiry committee should examine this issue by calling the applicant and respondents should consider all the documents presented by them.

5. After considering all the documents, enquiry committee arrive at the conclusion that whether the applicant was genuinely absent from the duty from 23.06.2017 to 01.02.2021 or he was prevented from not to join on duty. The report should be prepared within 60 days from the date of receipt of this order. Copy of report should be signed by Head of Institution and filed before this Tribunal through Id. P.O.. S.O. after 60 days."

9. As per the directions of this Tribunal, the respondents have submitted their report. It is marked Exh. 'X' for the purpose of identification. From the perusal of the report it is clear that inquiry was made by the Government. The applicant has stated that he wanted to join duty on 23.06.2017 but he was not allowed to join duty. The Medical Superintendent of the E.S.I.C. hospital, Nagpur has stated in the inquiry that the applicant was not present on 23.06.2017 to join the duty. There is nothing on record to shows that applicant was forced not to join duty. The applicant wanted to work at Mumbai. His O.A. itself shows that he

made several representations for cancellation of posting at Nagpur and he should be transferred back to Mumbai. The applicant was not interested to work at Nagpur therefore, he remain absent for considerable period of seven years. So he cannot claim the salary of his absenteeism period. There is no merit in the O.A..

10. Judgment cited by the applicant in the case of **Union of India Vs. K.V.Jankiraman (supra)** is not applicable to the case in hand because the Hon'ble Supreme Court has observed that "no work no pay" is a general rule with its exception to the principle that if employee is compelled for not joining the duty then such employee is entitled for pay. The applicant was not compelled not to join duty because he himself didn't want to work at Nagpur. He was not present on 23.06.2017 to join duty at Nagpur. He made several representations in this regard for cancellation of posting at Nagpur. He wants to work at Mumbai only. Reply by the respondents clearly shows that he was absent from duty near about seven years. It is a misconduct committed by the applicant. Therefore, he is not entitled for the relief prayed in the O.A.. Hence the following order:-

O R D E R

O.A. stands dismissed with no order as to costs.

Vice Chairman

Date:-11/11/2022.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 11/11/2022.
and pronounced on

Uploaded on : 17/11/2022.